

840 CMR 10.00: STANDARD RULES FOR DISABILITY RETIREMENT

10.15: Examination of a Member Previously Retired for Disability

(1) If after an evaluation pursuant to M.G.L. c. 32, § 8 it is determined that a retired member is able to perform the essential duties of the position from which he or she retired or a similar job within the same department for which he or she is qualified without a medical or vocational rehabilitation program, or after the completion of a rehabilitation program as provided in 840 CMR 10.18, the Commission shall appoint a medical panel to examine the member to determine the scope of the member's mental physical capabilities and whether the member is able to perform the essential duties of his job or the essential duties of a similar job within the same department given the member's condition.

(2) The Commission shall appoint a panel to consist of a single physician or a three member medical panel. If a three member panel is appointed, the physicians need not examine the member at the same time and place. The panel shall consist of a physician skilled in the particular branch of medicine or surgery that would encompass the condition for which the member retired and such other physicians as the Commission determines necessary to determine the scope of the member's capabilities and whether the member is able to perform the essential duties of his or her job or the essential duties of a similar job within the same department given the member's condition

(3) The Commission shall give the member, the employer and the retirement board at least 14 days notice of the medical panel examination. An applicant may waive his or her right to 14 days notice by filing a written waiver with the Commission. Examinations shall be held at a reasonably convenient time and place for all parties.

(4) Medical Tests. The medical panel may suggest any "non-invasive" medical test which the panel considers necessary to render an opinion of the member's medical condition. The Commission shall assume the cost of any non-invasive test suggested by the medical panel up to an amount that the Commission shall determine annually. This annual determination will be communicated to all retirement boards during the month of January. No test the cost of which exceeds the annual amount determined by the Commission shall be ordered or required by the medical panel without the advance approval of the Commission.

(5) At the election of the member and employer, the member's physician and employer's physician, may be present and may answer questions from the panel during the decision making process of the panel. Neither physician shall otherwise participate in the decision making process of the panel.

(6) If a member is unable to attend any scheduled medical panel examination the member shall notify the Commission and may request that the examination be rescheduled. The Commission will ordinarily grant requests for rescheduling only for extenuating circumstances such as death in the family or hospitalization or serious illness of the member, provided that appropriate documentation of such is provided to the Commission. If a request for rescheduling is denied by the Commission, and the applicant fails to appear at the scheduled examination, the member

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shall reimburse the Commission for the costs of that examination. Reimbursement may be waived if the Commission finds that there was just cause for the member's failure to appear.

(7) Confidentiality. Since the principal purpose of the examination is to discuss and evaluate the physical condition or mental health of the member, attendance at the examination shall be limited to the member and the medical panel physician(s), the employee's physician and the employer's physician. The member's attorney and the employer's attorney may attend the examination. The member may permit the presence of other individuals, provided that their presence will not disrupt the examination. No document received during the examination shall be made available to the public except as may be required by other laws and regulations applicable to such records.

(8) Certification of Panel Findings. The medical panel shall report its findings and recommendations to the Commission on certificates supplied by the Commission within 60 days after completing the examinations. Within five days of receiving a properly completed medical panel or physician report, the Commission shall forward the report to the retirement board for appropriate action.

(9) Restoration to Service of Sworn Members of the State Police. The restoration to service process for sworn members of the State Police is provided for in G.L. c. 32, § 26. Retirees who would be restored to positions of sworn State Police Officers are to be evaluated once each year during the first two years after retirement, once every three years thereafter, or at any time upon written request. Any retiree who has been retired for disability under the provisions of G.L. c. 32, §§ 6, 7, or 26 for more than ten years, and has during such time complied with the evaluation requirements, shall not be required to participate in any further evaluations. The Commission's comprehensive medical evaluation and restoration to service process may involve examinations by four physicians. A single physician may examine the retired State Police Officer in the comprehensive medical evaluation process and three physicians in the restoration to service process. Two of the three physicians in the restoration to service examination will be selected by the Commission and the third physician will be the State Police Surgeon. All physicians involved in the process must consider the Massachusetts State Police Officer's Medical Fitness Standards and Essential Task List, the Massachusetts State Police Academy Physical Fitness and Preparation Guide, and Physical Training Protocol when determining if a retiree is able to meet all of the Massachusetts State Police requirements. If the retiree completes the Commission's restoration to service process and is found able to perform the essential duties of his or her job, the medical reports are forwarded to the Colonel of the State Police. The Colonel makes the final determination with regard to a retiree's restoration to service.

(10) Re-evaluation of Retiree Able to Perform the Essential Duties of His or Her Position. When a retiree is found able to perform the essential duties of the position from which he or she retired, the Commission will notify the retiree, the retirement board, the employer, and the Commonwealth's Division of Human Resources. Some time may pass before a position becomes available and the retiree is actually restored to service. In the interim, a Commission

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case manager and a physician selected by the Commission will monitor the retiree's medical status. Every six months, the retiree will be asked to complete and return a health questionnaire to the Commission. The retiree will also be re-evaluated by a comprehensive medical evaluation physician upon any significant change in his or her medical condition and before returning to work. The goal is to assess the retiree's medical readiness to return to work and to minimize the possibility of missing a retraining opportunity.

8/27/04